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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,610	03/24/2004	Atsushi Shibutani	81874.0040	4238

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EXAMINER
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SELBY, GEVELL V

ART UNIT	PAPER NUMBER
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2622

MAIL DATE	DELIVERY MODE
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07/05/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/807,610	Applicant(s) SHIBUTANI, ATSUSHI	
	Examiner Gevell Selby	Art Unit 2622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                 | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 101*

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 22 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims regarding a program are descriptive material per se and are not statutory because they are not capable of causing functional change in the computer. The following is a suggested preamble:

“a computer readable medium have encoded thereon a computer program comprising a set of instructions when executed by a computer to implement a method for capturing processing and storing moving and still images, the method comprising the steps of:”.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. **Claims 15-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Shimizu, US 7,064,780.**

In regard to claims 15, Shimizu, US 7,064,780, discloses an imaging device comprising:

- an image capturing unit (see figure 1, element 12);

- a first imaging control unit (see figure 1, element 26) that has the image capturing unit execute moving picture imaging (see column 3, lines 1-10);

- a first recording control unit (see figure 1, element 26) that records in a memory moving picture data obtained through the moving picture imaging by the first imaging control unit (see column 3, lines 29-37);

- a recording instruction unit (see figure 1, element 24) that instructs to record a still picture (see column 3, lines 29-37);

- a still picture acquisition unit (see figure 1, element 12) that acquires, when recording of a still picture is instructed by the recording instruction unit during execution of the moving picture imaging by the first imaging control unit, still picture data at the timing instructed (see column 3, line 62 to column 4, line 12);

- a second recording control unit (see figure 1, element 26) that records in a memory the still picture data acquired by the still picture acquisition unit (see column 4, lines 12-18);

- a third recording control unit (see figure 1, element 26) that records timing information that specifies the timing instructed in correlation to the moving picture data when recording of a still picture is instructed by the recording

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instruction unit during execution of the moving picture imaging by the first imaging control unit (see column 4, lines 12-18);

a still picture extracting unit (see figure 1, element 14) that extracts, based on the timing information recorded in correlation to the moving picture data in the memory, from the moving picture data the still picture data at the timing instructed to record the still picture (see column 3, line 67 to column 4, line 12); and

an index image reproduction unit (see figure 1, element 14) that reproduces the still picture data extracted by the still picture extracting unit as index image data of the moving picture data (see column 5, lines 6-21).

In regard to claim 16, Shimizu, US 7,064,780, discloses an imaging device according to claim 15, further comprising a second imaging control unit (see figure 1, element 26) that has the image capturing unit execute still picture imaging, wherein the recording instruction unit instructs still picture imaging and still picture recording, the second imaging control unit has the imaging unit execute still picture imaging when the recording instruction unit instructs still picture imaging and still picture recording, and the still picture acquisition unit acquires still picture data obtained through the still picture imaging by the second imaging control unit when the recording instruction unit instructs still picture imaging and still picture recording (see column 3, line 60 to column 4, line 18).

In regard to claim 17, Shimizu, US 7,064,780, discloses an imaging device according to claim 15, wherein the timing information is information indicative of the

number of picture frames (see column 4, lines 33-48: in continuous shooting mode, the timing information is set according to the number of still image to be captured, in this case 9).

In regard to claim 18, Shimizu, US 7,064,780, discloses an imaging device according to claim 15, wherein the timing information is information indicative of an elapsed time from the time the moving picture imaging is started until the still picture imaging is instructed (see column 4, lines 9-18).

In regard to claim 19, Shimizu, US 7,064,780, discloses an imaging device comprising:

- an image capturing unit (see figure 1, element 12);

- a first imaging control unit (see figure 1, element 26) that has the image capturing unit execute moving picture imaging (see column 3, lines 1-10);

- an imaging instruction unit (see figure 1, element 28) that instructs still picture imaging (see column 3, lines 62-65);

- a second imaging control unit (see figure 1, element 26) that has the image capturing unit execute still picture imaging when imaging of a still picture is instructed by the imaging instruction unit during execution of the moving picture imaging by the first imaging control unit (see column 3, line 60 to column 4, line 18);

- a recording control unit (see figure 1, element 24) that records in a memory correlating moving picture data obtained through the moving picture imaging by the first imaging control unit (see column 3, lines 29-37) and still

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picture data obtained through the still picture imaging by the second imaging control unit to each other (see column 4, lines 12-18); and

an index image reproduction unit (see figure 1, element 14) that reproduces the still picture data extracted by the still picture extracting unit as index image data of the moving picture data (see column 5, lines 6-21).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 1-14 and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shimizu, US 7,064,780, in view of Nagasaka et al., US 6,023,520.**

In regard to claims 1, 21, and 22 Shimizu, US 7,064,780, discloses an imaging device, imaging method, and a recording medium with a computer program stored thereon comprising:

an image capturing unit (see figure 1, element 12);

a first imaging control unit (see figure 1, element 26) that has the image capturing unit execute moving picture imaging (see column 3, lines 1-10);

a first recording control unit (see figure 1, element 26) that records in a memory moving picture data obtained through the moving picture imaging by the first imaging control unit (see column 3, lines 29-37);

a recording instruction unit (see figure 1, element 24) that instructs to record a still picture (see column 3, lines 29-37);

a still picture acquisition unit (see figure 1, element 12) that acquires, when recording of a still picture is instructed by the recording instruction unit during execution of the moving picture imaging by the first imaging control unit, still picture data at the timing instructed (see column 3, line 62 to column 4, line 12);

a second recording control unit (see figure 1, element 26) that records in a memory the still picture data acquired by the still picture acquisition unit (see column 4, lines 12-18).

The Shimizu reference does not disclose a third recording control unit that records in a memory the still picture data acquired by the still picture acquisition unit as index image data of the moving picture data recorded in the memory by the first recording control unit.

Nagasaka et al., US 6,023,520, discloses a image processing device with a recording control unit that records in a memory the still picture data acquired by the still picture acquisition unit as index image data (icon image) of the moving picture data recorded in the memory by the first recording control unit (see column 5, lines 4-8 and column 6, lines 1-16).

It would have been obvious to one of ordinary skill in the art at the time of invention to have been motivated to modify Shimizu, US 7,064,780, in view of Nagasaka et al., US 6,023,520, to have a third recording control unit that records in a memory the still picture data acquired by the still picture acquisition unit as index image data of the



moving picture data recorded in the memory by the first recording control unit, in order to give the user a visual of the video clip to easily select the desired moving image.

In regard to claim 2, Shimizu, US 7,064,780, in view of Nagasaka et al., US 6,023,520, discloses an imaging device according to claim 1. The Shimizu reference discloses further comprising a second imaging control unit (see figure 1, element 26) that has the image capturing unit execute still picture imaging, wherein the recording instruction unit instructs still picture imaging and still picture recording, the second imaging control unit has the imaging unit execute still picture imaging when the recording instruction unit instructs still picture imaging and still picture recording, and the still picture acquisition unit acquires still picture data obtained through still picture imaging by the second imaging control unit when the recording instruction unit instructs still picture imaging and still picture recording (see column 3, line 60 to column 4, line 18).

In regard to claim 3, Shimizu, US 7,064,780, in view of Nagasaka et al., US 6,023,520, discloses an imaging device according to claim 1. The Shimizu reference discloses wherein, when the recording instruction unit instructs still picture recording, the still picture acquisition unit acquires still picture data at a timing of the instruction from among moving picture data obtained through the moving picture imaging by the first imaging control unit (see column 4, lines 8-12).

In regard to claim 4, Shimizu, US 7,064,780, in view of Nagasaka et al., US 6,023,520, discloses an imaging device according to claim 1. The Shimizu reference further comprising: a still picture imaging unit (see figure 1, element 12) that captures still

pictures, wherein the recording instruction unit instructs still picture imaging and still picture recording, and a third imaging control unit (see figure 1, element 26) that has the still picture imaging unit execute still picture imaging when the recording instruction unit instructs still picture imaging and still picture recording, wherein the still picture acquisition unit acquires still picture data obtained through the still picture imaging by the third imaging control unit when the recording instruction unit instructs still picture imaging and still picture recording (see column 3, line 62 to column 4, line 12).

In regard to claim 5, Shimizu, US 7,064,780, in view of Nagasaka et al., US 6,023,520, discloses an imaging device according to claim 1. The Shimizu reference discloses further comprising a size reduction unit (see figure 1, element 18) that reduces a picture size of still picture data acquired by the still picture acquisition unit (see column 3, lines (see column 3, lines 18-28) and the Nagasaka reference discloses wherein the third recording control unit records still picture data whose picture size is reduced by the size reduction unit in the memory as index picture data of the moving picture data (see column 5, lines 4-8 and column 6, lines 1-16).

In regard to claim 6, Shimizu, US 7,064,780, in view of Nagasaka et al., US 6,023,520, discloses an imaging device according to claim 1. The Shimizu reference discloses wherein the third recording control unit records in the memory still picture data acquired by the still picture acquisition unit in correlation to the moving picture data (see column 4, lines 12-18).

In regard to claim 7, Shimizu, US 7,064,780, in view of Nagasaka et al., US 6,023,520, discloses an imaging device according to claim 6. The Shimizu reference

discloses further comprising a moving picture file creation unit (see figure 1, element 24) that creates a moving picture file based on moving picture data acquired through the moving picture imaging by the first imaging control unit, wherein the first recording control unit records in the memory a moving picture file created by the moving picture file creation unit (see column 3, lines 31-37), and the Nagasaka reference discloses the third recording control unit records in the memory still picture data acquired by the still picture acquisition unit as accompanying data of the moving picture file that is recorded in the memory by the first recording control unit (see column 5, lines 4-8).

In regard to claim 8, Shimizu, US 7,064,780, in view of Nagasaka et al., US 6,023,520, discloses an imaging device according to claim 1. The Shimizu reference discloses wherein the third recording control unit records in the memory still picture data acquired by the still picture acquisition unit as head picture data of the moving picture data that is recorded in the memory by the first recording control unit (see figure 5).

In regard to claim 9, Shimizu, US 7,064,780, in view of Nagasaka et al., US 6,023,520, discloses an imaging device according to claim 1. The Shimizu reference discloses further comprising an imaging instruction unit (see figure 1, element 28) that instructs moving picture imaging, wherein the first imaging control unit has the imaging unit execute moving picture imaging when the imaging instruction unit instructs the moving picture imaging (see column 2, lines 47-50).

In regard to claim 10, Shimizu, US 7,064,780, in view of Nagasaka et al., US 6,023,520, discloses an imaging device according to claim 9. The Nagasaka reference discloses wherein the third recording control unit records in the memory first still picture

data acquired by the still picture acquisition unit after the imaging instruction unit instructs the moving picture imaging as index picture data of the moving picture data (see column 5, lines 4-8).

In regard to claim 11, Shimizu, US 7,064,780, in view of Nagasaka et al., US 6,023,520, discloses an imaging device according to claim 1. The Shimizu reference discloses wherein, when the recording instruction unit instructs still picture imaging a plurality of times during execution of the moving picture imaging by the first imaging control unit, the still picture acquisition unit acquires a plurality of still picture data at timings of the instructions (see column 4, lines 8-12), the second recording control unit records in the memory the plurality of still picture data acquired by the still picture acquisition unit (see column 4, lines 12-18), and the Nagasaka reference discloses the third recording control unit records in the memory the plurality of still picture data acquired by the still picture acquisition unit as index picture data of the moving picture data (see column 5, lines 4-8 and column 6, lines 1-16).

In regard to claim 12, Shimizu, US 7,064,780, in view of Nagasaka et al., US 6,023,520, discloses an imaging device according to claim 1. The Nagasaka reference discloses further comprising a judging unit that judges whether the recording instruction unit instructs still picture imaging during execution of the moving picture imaging by the first imaging control unit, wherein the third recording control unit records in the memory head picture data of moving picture data recorded in the memory by the first recording control unit as index picture data of the moving picture data, when the judging unit judges that still picture imaging is not instructed (see column 5, lines 4-8: the memory

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head picture or icon is saved when a still picture imaging is not instructed since the icon is always saved with the moving image).

In regard to claim 13, Shimizu, US 7,064,780, in view of Nagasaka et al., US 6,023,520, discloses an imaging device according to claim 1, further comprising an index picture reproducing unit (see figure 1, element 14) that reproduces still picture data that is recorded as index picture data in the memory by the third recording control unit (see column 5, lines 6-21).

In regard to claim 14, Shimizu, US 7,064,780, in view of Nagasaka et al., US 6,023,520, discloses an imaging device according to claim 13, wherein the index picture reproducing unit includes a unit that reproduces a plurality of still picture data recorded in the memory as index picture data by the third recording control unit, and further comprising a selection unit (see figure 1, element 28) that selects desired still picture data among the plurality of still picture data reproduced by the index picture reproducing unit, and a moving picture reproducing unit that reproduces moving picture data corresponding to the still picture data selected by the selection unit (see column 5, lines 16-25).

In regard to claim 20, Shimizu, US 7,064,780, discloses an imaging device comprising:

image capturing means (see figure 1, element 12);

first imaging control means (see figure 1, element 26) for having the image capturing means execute moving picture imaging (see column 3, lines 1-10);

first recording control means (see figure 1, element 26) for recording in a memory moving picture data obtained through the moving picture imaging by the first imaging control means (see column 3, lines 29-37);

recording instruction means (see figure 1, element 24) for instructing to record a still picture (see column 3, lines 29-37);

still picture acquisition means (see figure 1, element 12) for acquiring, when the recording of a still picture is instructed by the recording instruction means during execution of the moving picture imaging by the first imaging control means, still picture data at the timing instructed (see column 3, line 62 to column 4, line 12);

second recording control means (see figure 1, element 26) for recording in a memory the still picture data acquired by the still picture acquisition means (see column 4, lines 12-18); and

The Shimizu reference does not disclose a third recording control unit that records in a memory the still picture data acquired by the still picture acquisition unit as index image data of the moving picture data recorded in the memory by the first recording control unit.

Nagasaka et al., US 6,023,520, discloses a image processing device with a recording control unit that records in a memory the still picture data acquired by the still picture acquisition unit as index image data (icon image) of the moving picture data recorded in the memory by the first recording control unit (see column 5, lines 4-8 and column 6, lines 1-16).

It would have been obvious to one of ordinary skill in the art at the time of invention to have been motivated to modify Shimizu, US 7,064,780, in view of Nagasaka et al., US 6,023,520, to have a third recording control unit that records in a memory the still picture data acquired by the still picture acquisition unit as index image data of the moving picture data recorded in the memory by the first recording control unit, in order to give the user a visual of the video clip to easily select the desired moving image.

### *Conclusion*

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 7,145,601, discloses an image reproducing device that displays frames or index images of still images and moving images.

US 6,683,649, discloses an imaging device that captures, stores and displays still and moving images.

US 6,680,748, discloses an image acquisition system that acquires and stores video images and still images.

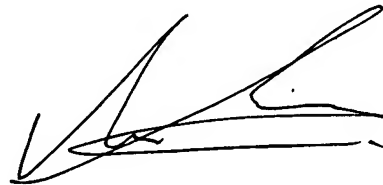
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gevell Selby whose telephone number is 571-272-7369. The examiner can normally be reached on 8:00 A.M. - 5:30 PM (every other Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivek Srivastava can be reached on 571-272-7304. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

gvs

A handwritten signature in black ink, appearing to read 'Vivek Srivastava', is written over a horizontal line.

VIVEK SRIVASTAVA  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600